



Commonwealth of Virginia  
Virginia Information Technologies Agency

**WBVCS APPLICATION SERVICE PROVIDER SOLUTION**

Date: August 18, 2008

Contract #: VA-080424-VIAK

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA

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FIN: 86-0996505

Term: April 18, 2008 – April 17, 2011

Payment: Net 30 days

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NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

CONTRACT # VA-080424-VIAK  
CONTRACT CHANGE LOG

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# **WBVCS Application Service Provider Solution Contract**

between

**The Virginia Information Technologies Agency**

on behalf of

**The Commonwealth of Virginia**

and

**VIACK CORPORATION**

## WBVCS APPLICATION SERVICE PROVIDER CONTRACT TABLE OF CONTENTS

<b>1. PURPOSE</b>	<b>5</b>
<b>2. DEFINITIONS</b>	<b>5</b>
A. Acceptance	5
B. Application	5
C. Application Users	5
D. Authorized Users	5
E. Computer Virus	5
F. Confidential Information	6
G. Content	6
H. Documentation	6
I. Electronic Self-Help	6
J. Licensed Services	6
K. Party	6
L. Requirements	6
M. Statement of Work (SOW)	7
N. Supplier	7
O. Supplier Product	7
P. Update	7
Q. VITA	7
R. Web Site	7
<b>3. TERM AND TERMINATION</b>	<b>7</b>
A. Contract Term	7
B. Termination for Convenience	8
C. Termination for Breach or Default	8
<b>4. DESCRIPTION OF LICENSED SERVICES</b>	<b>9</b>
<b>5. SUPPLIER RESPONSIBILITIES</b>	<b>10</b>
A. Standard Application Responsibilities	10
B. Ancillary Responsibilities	11
C. Import/Export	11
<b>6. AUTHORIZED USER RESPONSIBILITIES</b>	<b>12</b>
<b>7. CONTENT SECURITY</b>	<b>13</b>
<b>8. PROPRIETARY RIGHTS</b>	<b>14</b>
A. Supplier's Proprietary Rights	14
B. Authorized User Requirements and License Restrictions	14
C. Authorized User Proprietary Rights	15
<b>9. TRANSITION ASSISTANCE</b>	<b>15</b>
<b>10. FEES, ORDERING AND PAYMENT PROCEDURE</b>	<b>16</b>
A. Fees and Charges	16
B. Application Demonstration	17
C. Statement of Work (SOW)	17
D. Ordering	17
E. Invoice Procedures	18
F. Purchase Payment Terms	19
G. Supplier's Report of Sales and Industrial Funding Adjustment	20
H. Small, Woman, and Minority-Owned Business (SWaM) Participation	20
<b>11. TRAINING AND DOCUMENTATION</b>	<b>21</b>
<b>12. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES</b>	<b>21</b>
A. Licensed Services Commencement Date	21
B. Acceptance	21

C. Cure Period	22
13. GENERAL WARRANTY	23
A. Ownership	23
B. Licensed Services, Application, and Documentation	23
C. Malicious Code	24
D. Access to Product and Passwords	24
E. Open Source	24
F. Supplier's Viability	24
G. Supplier's Past Experience	25
14. RECORDS AND AUDIT	25
15. APPLICATION AND LICENSED SERVICES SUPPORT	25
A. Coverage	25
B. Service Levels	25
C. Application Evolution	31
16. SERVICE LEVELS AND REMEDIES	32
A. Reporting	32
B. Failure to Meet Service Level Commitments	33
C. Escalation Procedures	33
17. COMPETITIVE PRICING	34
18. CONFIDENTIALITY	34
A. Treatment and Protection	34
B. Exclusions	35
C. Return or Destruction	35
19. LIABILITY AND INDEMNIFICATION	36
20. INSURANCE	37
21. SECURITY COMPLIANCE	38
22. BANKRUPTCY	38
23. STEERING COMMITTEE	39
24. GENERAL PROVISIONS	39
A. Relationship Between VITA and Authorized User and Supplier	39
B. Incorporated Contractual Provisions	40
C. Compliance with the Federal Lobbying Act	40
D. Governing Law	40
E. Dispute Resolution	41
F. Advertising and Use of Proprietary Marks	41
G. Notices	41
H. No Waiver	42
I. Assignment	42
J. Captions	42
K. Severability	42
L. Survival	42
M. Force Majeure	42
N. Remedies	42
O. Right to Audit	43
P. Entire Contract	43
25. EXHIBIT A: APPLICATION AND LICENSED SERVICES REQUIREMENTS	45
26. EXHIBIT B: APPLICATION OPTIONS LIST; FEES; LICENSED SERVICE CHARGES; PAYMENT SCHEDULE	56
27. EXHIBIT C-1 AND EXHIBIT C-2	57
28. EXHIBIT D – STATEMENT OF WORK TEMPLATE	58
29. EXHIBIT E: SUPPLIER CONTRACT ADDENDUM	59
30. EXHIBIT F: CERTIFICATION REGARDING LOBBYING	66
31. EXHIBIT G: ADDITIONAL SECURITY AND CONFIDENTIALITY REQUIREMENTS	68

## WBVCS APPLICATION SERVICE PROVIDER CONTRACT

THIS WBVCS (Web Based Video Conference Solution) APPLICATION SERVICE PROVIDER CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, (hereinafter referred to as "VITA") and VIACK Corporation ("Supplier") to be effective as of April 18, 2008 (Effective Date).

### 1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to provide the Licensed Services, including access to the Application(s), and any related products and services to the Authorized Users and to any Application Users as required by such Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Acceptance shall take the form of completed and successful acceptance testing in conformance with the Requirements as determined by Authorized User in applicable order in the format of the VITA SOW (attached as Exhibit D)

#### B. Application

The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to the Licensed Services hosted and supported by Supplier under this Contract, as described in Exhibit A, including any Updates, enhancements, and replacements to the Application.

#### C. Application Users

Application Users shall include, as specified in the applicable order, employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as well as customers, suppliers, members of the general public, and other entities with whom an Authorized User may find it necessary or desirable to process or communicate electronically in pursuit of its business.

#### D. Authorized Users

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### E. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

#### F. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party. Any information provided by an Application User which type of information is designated by the Authorized User as "Confidential" or "Proprietary" or which information is otherwise reasonably identifiable as the confidential or proprietary information of the Application User providing such information. The Supplier acknowledges that all Information regarding or obtained, collected or disclosed during the use of the Service by the Authorized User and any third party participants for proceedings or events shall be deemed Confidential and Proprietary.

**G. Content**

Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise provided to Supplier by Authorized User or by any Application User, and any software and related documentation, from whatever source, provided by Authorized User to Supplier in connection with this Contract.

**H. Documentation**

The Supplier's user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates describing the Application, Licensed Services and Supplier Product provided to Authorized User, in printed and/or electronic form.

**I. Electronic Self-Help**

Any use of electronic means to exercise Supplier's license or service termination rights, if allowable pursuant to the Contract, upon breach or cancellation, termination or expiration of this Contract or any order placed hereunder.

**J. Licensed Services**

The operation of the Application and the necessary operating system software, hardware and utilities on Supplier's host computer system, furnishing Supplier Product to Application Users, storing Content and making the Application, Content, and Supplier Product available to Application User(s) via the Web Site, as more fully described in Exhibit A.

**K. Party**

Supplier, VITA, or any Authorized User.

**L. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Licensed Services and Application described in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder. In case of conflict, see the Entire Contract clause for order of precedence (§24.N.).

**M. Statement of Work (SOW)**

Any document in substantially the form of Exhibit D to this Contract which, upon signing by both Parties to the agreement, shall be deemed a part of this Contract, and which describes the deliverables, due dates, duration, and payment obligations for a specific project or engagement in which Supplier shall provide the Licensed Services, including access to the Application(s), to an Authorized User and its designated Application Users. Any Statement of Work shall constitute an order.

**N. Supplier**

Includes any individual who is an employee, agent, sub-contractor, or independent contractor of Supplier to provide Licensed Services and/or any products or services related thereto under this Contract.

**O. Supplier Product**

Supplier's proprietary reports, information and data made available to Authorized User and its Application Users as part of the Licensed Services.

**P. Update**

As applicable, any update, modification or new release of the Application, Documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost.

**Q. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

**R. Web Site**

The Internet site operated by Supplier to provide access to the Application, with the Uniform Resource Locator (URL) specified in the applicable Statement of Work (or any successor URL(s)).

### 3. TERM AND TERMINATION

#### A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of three (3) years. VITA may, in its sole discretion, extend this Contract for up to two (2) additional one year periods after the expiration of the initial three (3) year period. VITA will issue a written notification to the Supplier stating the extension period not less than thirty (30) days prior to the expiration of any current term. Expiration of the term of the Contract shall mean that the service provided through licensing of Supplier's hosted software shall terminate at the conclusion of the period for which the software licenses have been paid. No perpetual licenses are granted by Supplier. In addition, performance of an order may survive the expiration of the term of this Contract, and all terms and conditions required for the operation of such order shall remain in full force and effect until Supplier has completely rendered the Licensed Services pursuant to such order.

#### B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason ("Termination for Convenience"). In addition, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit for resolution any contractual dispute or order dispute to VITA, or any dispute regarding an order terminated by an Authorized User to such Authorized User, according to the terms of the Dispute Resolution Section of this Contract. Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Licensed Services rendered or Application components delivered by Supplier prior to the termination date. Termination of this Contract or any order for Convenience shall not affect any service associated with software license subscription through the period for which the service was contracted, provided all fees for such license have been paid.

#### C. Termination for Breach or Default

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier ("Termination for Breach" or "Termination for Default"). Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue, in writing, a "Show Cause Notice" to the Supplier identifying the failure and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract or any order issued hereunder, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352.

In the event of a Termination for Breach or Termination for Default, the affected Authorized User(s) shall not be liable for any cost related to the terminated Contract, order, or portion thereof. Supplier shall accept return of any products or software provided to the affected Authorized User(s), and Supplier shall refund any monies paid by any affected Authorized User for Licensed Services not accepted by such Authorized User pursuant to the Contract, order, or portion thereof terminated for breach and/or default. All costs of de-installation and return of product or software shall be borne by Supplier.



The failure of VITA or an Authorized User to exercise its right to terminate for breach and/or default under this provision shall not be construed as a waiver of its right to terminate for breach and/or default, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach and/or default of any provisions of such agreements.

Supplier shall submit any contractual dispute to VITA or any order dispute to the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section.

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds.

#### 4. DESCRIPTION OF LICENSED SERVICES

During the term of any order issued pursuant to this Contract, Supplier hereby agrees to host the Application(s) listed and described in Exhibit A and specified in such order by the ordering Authorized User on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to Authorized User's designated Application Users through the Internet.

Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for all Authorized Users. Supplier hereby grants each ordering Authorized User and its Application Users a non-exclusive, non-transferable, worldwide license to access and use by any Supplier-supported method the Application during the term of the applicable order issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode.

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein shall supersede and govern licensing and use of all products and services hereunder.

#### 5. SUPPLIER RESPONSIBILITIES

##### A. Standard Application Responsibilities

Unless otherwise indicated in Exhibit A, Supplier shall acquire and maintain, at no charge to Authorized User, the hardware and software required to host the Application(s). The hardware and software on which the Application(s) is hosted will be maintained in good operating condition, consistent with or exceeding generally accepted industry practices and procedures. In addition:

- i). Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and required storage capacity at the hosted site as indicated in Exhibit A. Bandwidth requirements for use of the Application at the Authorized User desktops shall be the responsibility of the ordering agency
- ii). Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.
- iii). Supplier may collect user-specific data only as necessary to provide the Licensed Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the Contract.
- iv). The Application will be made available to Authorized User and/or designated Application Users, as specified in the applicable Statement of Work, twenty-four (24) hours a day, seven

(7) days a week ("Uptime") less Excusable Downtime. For the purposes of this Contract, "Excusable Downtime" is defined as that period of time when the Licensed Services are not available to Authorized User or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, each Authorized User and those entities or employees otherwise designated by request to receive notice of Downtime ("other Downtime noticees"), shall be provided a seven (7) business days advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify each Authorized User and other Downtime notice of a planned Downtime as soon as practicable. Excusable Downtime is not to exceed thirty-six (36) hours in duration in a single month or more than three consecutive hours at any time and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.

- v). Excusable Downtime shall not include (i) an electronic hardware failure, (ii) a failure in the Supplier's Application, (iii) an electric utility failure at Supplier's facility where the Application is hosted, or (iv) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network or other public network, such as the internet.
- vi). Supplier guarantees the Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.
- vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to Authorized User that portion of the total recurring fees that would otherwise be owed by Authorized User under this Contract during the month of such failure for the period of performance in that month in which the failure occurred. Such credit will be issued in the month immediately following the failure.
- viii). Supplier shall be required to back up Content on a daily basis and shall retain the backed-up Content on a separate and dedicated secure server. Only Content supplied by or to an Authorized User may reside on such server. Authorized User reserves the right to request a copy of such back-up Content at any time.

In addition, and at no additional cost to Authorized Users, Supplier shall provide access to additional Updates, features, and functionalities of the Application as are provided by Supplier to other customers of Supplier who require functionality similar to that of the Application provided to Authorized Users. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Supplier website. Notwithstanding the provisions of this Section and except as agreed to in writing by VITA and Supplier, nothing in the Contract shall oblige Supplier to undertake any modifications to the Application, and all such modifications are at Supplier's sole discretion whether suggested by an Authorized User or another party.

## **B. Ancillary Responsibilities**

Supplier shall, throughout the term of this Contract, make available such resources, including Supplier personnel, as are reasonably required to: (i) train designated Authorized User personnel in the use of the Application; (ii) develop modifications to the Application through Supplier's standard product development life cycle process and release cycles as agreed by VITA and Supplier in any exhibit hereto or as agreed in any order issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order issued hereunder.

## **C. Import/Export**

Any product generated from any data collected, developed, analyzed, or otherwise used or obtained by Supplier pursuant to Supplier's performance of this Contract shall be considered Data Product.

Supplier shall not export or re-export any data collected, developed, analyzed, or otherwise used or obtained by Supplier pursuant to Supplier's performance of this Contract, or any Data Product, to any country, person, entity or end user subject to U.S. export restrictions. Supplier specifically agrees not to export, re-export, or download such data or Data Product: (a) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria,

Federal Republic of Yugoslavia, or to any national of any such country; (b) to any end-user who Supplier knows or has reason to know will utilize the data or Data Product or portion thereof in the design, development or production of nuclear, chemical, or biological weapons, or for any purpose which may, directly or indirectly, pose a security threat to the United States or its territories; or (c) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Supplier is responsible for complying with local laws in Supplier's jurisdiction, as well as all federal and state laws and regulations regarding import and export, which might impact its right to import, export, or use the data or Data Product.

In addition, VITA requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

## 6. AUTHORIZED USER RESPONSIBILITIES

Unless otherwise agreed and as applicable, Authorized User or its Agent, or an Application User, will be responsible for input of Content into Supplier's Application and Authorized User or its Agent will be responsible for keeping said Content current and accurate. Supplier will have no responsibility for assisting Authorized User in creating, modifying or inputting the Content, unless specified in Exhibit A.

If Supplier issues unique USERID's and passwords to an Application User:

- ix). Authorized User is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. Authorized User will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.
- x). Authorized User shall have the right to add, change access for, or delete USERID's at its sole discretion.
- xi). Upon notification by Authorized User of an Application User's deletion, Supplier shall remove said Application User from its server within one (1) hour of receipt of such notification. If Supplier fails to make such a deletion, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID. If the Authorized User serves as the account owner/manager and makes such deletions through access to the account portal, the Authorized User shall not be liable for any charges or damages incurred due to the use of a USERID which it has cancelled through the account portal.]

## 7. CONTENT SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components, to be provided by Supplier as part of its performance under this Contract in accordance with best industry practices in order to prevent unauthorized access to and use or modification of, and to otherwise protect, the Application and Content. Supplier shall, at a minimum, implement the following procedures designed to protect the security of Content:

- xii). User identification and access controls designed to limit access to Content to Application Users;
- xiii). External connections to the World Wide Web which will have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Supplier;
- xiv). Industry standard firewalls regulating all data entering Supplier's internal data network from any external source which will enforce secure connections between internal and external systems and will permit only specific types of data to pass through;
- xv). Industry standard encryption techniques which will be used when Content is transmitted by Supplier on behalf of Authorized User;

- xvi). Physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility. Access to facilities housing the Application and Content restricted to only allow access to personnel and agents of Supplier who have a need to know in connection with operation and support of the Application;
- xvii). Supplier's maintaining and following a disaster recovery plan designed to maintain Application User access to the Application and Licensed Services, and to prevent the unintended destruction of Content; and which plan, unless otherwise specified herein, shall provide for daily back-up of Content and archival of such Content at a secure facility. The disaster recovery plan shall provide for and be followed by Supplier such that in no event shall the Application, Licensed Services, Supplier Product and/or Content be unavailable to any Application User for a period in excess of twenty-four (24) hours;
- xviii). Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section;
- xix). Regular testing of the systems and procedures outlined in this Section; and
- xx). Audit controls that record and monitor Application and Licensed Services activity continuously.
- xxi). Other information security or confidentiality requirements that the Authorized User may implement, subject to notice to Supplier.
- xxii). Failure by Supplier to use best industry practices in fulfilling these security obligations shall eliminate any limitation of Supplier's liability to VITA, Authorized Users, or third parties, including the limitation on lost profits and consequential damages.

## **8. PROPRIETARY RIGHTS**

### **A. Supplier's Proprietary Rights**

Except as otherwise stated herein, as between VITA and Supplier, the Licensed Services (including without limitation, the Application and Updates, and Supplier Product, except to the extent that Supplier Product contains Content) and Documentation are and shall remain the sole and exclusive property of Supplier and its licensors. All modifications, enhancements, Updates, and translations of the Licensed Services shall be deemed a part thereof.

### **B. Authorized User Requirements and License Restrictions**

Except as otherwise provided in this Contract or as provided by law:

- xxiii). Authorized User will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof.
- xxiv). Authorized User shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application.
- xxv). Authorized User shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, an Authorized User may reproduce and distribute any Application output generated from the relevant Authorized User Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the applicable Authorized User's order.
- xxvi). Authorized User shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the Application or Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier; however, an Authorized User may reproduce and distribute any Application output (e.g., reports) generated by Authorized User using the Application, and an Application User may reproduce and distribute any Application output generated by the Application User using the Application and pursuant to the permissions set forth in the applicable Authorized User's order.

- xxvii). Authorized User shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services.
- xxviii). Authorized User shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;
- xxix). Authorized User shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;
- xxx). Authorized User shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information:
  - (i) in violation of any applicable law, statute, ordinance or regulation; (ii) in a manner that shall infringe the intellectual property rights of others; (iii) that is defamatory or trade libelous, or
  - (iv) that contains any Computer Viruses.
- xxxi). Authorized User shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

### **C. Authorized User Proprietary Rights**

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content is and shall remain the sole and exclusive property of Authorized User, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content relating to Authorized User's business shall remain the property of Authorized User, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content to Supplier. Upon termination of an order issued hereunder, Supplier agrees to either provide the Content to the applicable Authorized User, or, at such Authorized User's request, certify in writing that said Content in all formats, have been destroyed.

## **9. TRANSITION ASSISTANCE**

Upon execution of an order or Statement of Work pursuant to this Contract, Supplier and Authorized User will develop a transition plan ("Transition Plan") detailing each Party's respective tasks in connection with the orderly transition and migration of (i) all Content stored by Supplier pursuant to such order to Authorized User's archive and/or to a system or application maintained by Authorized User or a third party application service provider and, if applicable and agreed in writing by Authorized User and Supplier, (ii) the Application and Licensed Services to Authorized User or a third party service provider, such transition and migration to occur upon termination or expiration of the Contract or the applicable order. If Application User's Content stored on Supplier's servers is fully encrypted and such Authorized User content cannot be accessed by Supplier, and Authorized User has the ability through Supplier's service to copy and archive all such content on a system maintained by Authorized User or third-party and/or can be archived at the Application User desktop, this transition shall not be required.

At a minimum, the Transition Plan shall provide that upon expiration or termination of this Contract or the applicable order for any reason, Supplier will return all Content in its possession to the Authorized User in a format accessible without the use of Supplier's Application and, at Authorized User's option, continue to provide Licensed Services for up to six (6) months after the date of expiration or termination in order to facilitate Authorized User's transition to a new service provider and Supplier shall provide such reasonable assistance as may be requested by Authorized User to effectuate such transition.

In any event, regardless of whether a Transition Plan has been developed or implemented, Supplier shall, within thirty (30) days of expiration, completion, or termination of this Contract or any order issued hereunder, provide to all affected Authorized Users a complete set of all Content provided to Supplier by the relevant Authorized User and/or its Application Users and stored by the Application on behalf of such Authorized User, unless such Content is fully encrypted and not accessible to the Supplier. Supplier's failure to do so shall constitute a material breach of this Contract and, in addition

to the remedies set forth in this Contract, VITA or the affected Authorized User may exercise all available rights and remedies under law and equity.

The obligations set forth in this section and in any Transition Plan developed pursuant to an order issued pursuant to this Contract may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, or in the event of a termination due to Supplier's being included on the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, Supplier shall perform such obligations at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall perform such obligations at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

## **10. FEES, ORDERING AND PAYMENT PROCEDURE**

### **A. Fees and Charges**

As consideration for the Licensed Services, including the rights of the Authorized User and its Application Users to access and use the Application(s) and any additional products and services provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

### **B. Application Demonstration**

At the request of any Authorized User, Supplier shall perform a demonstration of its Application and the Licensed Services at such Authorized User's location or conduct an online demonstration and at no charge.

### **C. Statement of Work (SOW)**

An SOW shall be required for any Licensed Services ordered by an Authorized User pursuant to this Contract. All Licensed Services shall be provided in accordance with the Requirements and service levels set forth herein or in the applicable SOW and at the rates set forth in Exhibit B herein. An SOW shall be of a fixed price type but may contain a cost-reimbursable line item(s) for pre-approved travel expenses which shall be reimbursable by the Authorized User in accordance with the then-current per diem amounts as published by the Virginia Department of Accounts at [http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_1206.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf) or a successor URL(s).

Any change to an SOW must be described in a written change request. Either Party to an SOW may issue a change request that will be subject to written approval of the other Party, in the form of a modification to the SOW, before it becomes part of this Contract. An SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede. In no event shall any SOW or any modification thereto require the Supplier to provide any products or services that are beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

An SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in the applicable SOW. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract or of such SOW.

**D. Ordering**

Notwithstanding all Authorized User's rights to license or purchase Supplier's products or services under this Contract, an Authorized User is under no obligation to purchase or license from Supplier any of Supplier's products or services. This Contract is optional use and non-exclusive, and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

xxxii). Purchase Order (PO): An official PO form issued by an Authorized User.

xxxiii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

Additionally, Supplier may request that an Authorized User provide a completed copy of Supplier's Government Sales Agreement (GSA) incident to the fulfillment of an order. The GSA shall be used only for purposes of identifying quantities and price. In all instances, orders for which a GSA is completed shall be governed by this Contract and in the event of conflict, this Contract shall control. The submission of a GSA shall be in addition to, not in lieu of, ordering requirements under this Contract.

This ordering authority is limited to issuing orders for the Licensed Services and products or services related thereto and available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Non procurement Programs.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS SUCH AUTHORIZED USER IS VITA.

**E. Invoice Procedures**

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Licensed Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. Payment for Licensed Services shall be monthly in advance unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit B, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

xxxiv). Dates during which Supplier provided the Licensed Services to the Authorized User

xxxv). Quantity, charge and extended pricing for each Licensed Service

xxxvi). Applicable order date

xxxvii). This Contract number and the applicable order number

xxxviii). Supplier's Federal Employer Identification Number (FEIN).

Any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

#### **F. Purchase Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. Termination for lack of appropriations shall not affect any perpetual license granted pursuant to this Contract, provided all fees for such license have been paid.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until items or milestones have met Acceptance criteria. Charges for Licensed Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues.

In the event an Authorized User does not receive or have access to the applicable Documentation, payment shall not be due until the required Documentation is provided.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net thirty (30) days after Acceptance.

#### **G. Supplier's Report of Sales and Industrial Funding Adjustment**

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm> under "Supplier Reporting". The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm> under "Supplier Reporting".

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract.

#### **H. Small, Woman, and Minority-Owned Business (SWaM) Participation**

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small, Woman, and Minority Owned Businesses (SWaMs) as subcontractors and second-tier suppliers under this Contract. Supplier and VITA will review Supplier's SWaM subcontracting plan, which



was submitted with Supplier's proposal, and SWaM subcontract reporting, and will discuss ways of encouraging SWaM participation and increasing subcontracting spend with SWaM suppliers.

Supplier and VITA agree to meet annually thereafter to review SWaM subcontracting reports and discuss further action with respect to SWaM subcontracting and spend.

Discussions regarding SWaM subcontracting may be held in conjunction with meetings of the Steering Committee, as described in the Steering Committee section of this Contract.

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

## 11. TRAINING AND DOCUMENTATION

The Licensed Service fee includes all costs for the training of one (1) Authorized User trainer at an Authorized User's designated location or via online training conducted by Supplier's training resources on the use and operation of the Application, including instruction in any necessary conversion of such Authorized User's Content and data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit B.

Supplier shall deliver to any Authorized User, three (3) complete hard copies or electronic media of Documentation, as requested by such Authorized User, or Authorized User may access from Supplier's website any and all online tutorials and make as many copies as desired. Any Authorized User shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step operating procedures for each screen and activity, and technical reference manuals, if such Documentation has been produced by Supplier. Such Documentation shall be revised to reflect any modifications made by Supplier to the Application. Any Authorized User shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Application and may duplicate such Documentation and include it in such Authorized User's document or platform. All Authorized Users shall continue to include Supplier's copyright notice.

## 12. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES

### A. Licensed Services Commencement Date

The Supplier shall begin delivery of Licensed Services on the date requested by the Authorized User and agreed to by the Supplier in an order. An Authorized User may delay the Licensed Services commencement date by notifying the Supplier at least ten (10) business days before the scheduled Licensed Services commencement date.

### B. Acceptance

The Application shall be deemed accepted when the Authorized User reasonably determines that such Authorized User and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Authorized User and its Application Users. Such Authorized User agrees to complete Acceptance testing within ten (10) business days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to access the Application. Such Acceptance testing includes Authorized User and its Application Users scheduling and completing Supplier's standard set-up, installation and orientation in order for VIACK to ensure proper operation of the newly downloaded application within the ten (10) business days that Users have to complete Acceptance testing, or such longer period as may be agreed in writing between Authorized User and Supplier. After such period, unless Authorized User notifies Supplier to the contrary, the Application shall be deemed accepted. Supplier agrees to provide to such Authorized User such

assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: [http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_1206.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf) or a successor URL(s). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing.

### C. Cure Period

If during the Acceptance test period, Authorized User is unable to access the licensed functionalities of the Application, Supplier shall provide Authorized User with such access, and such Authorized User's Application Users with their required access, within ten (10) business days of written notice of inability to access, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to provide access to the licensed functionalities of the Application, such Authorized User may, in its sole discretion: (i) reject the Application in its entirety and recover amounts previously paid hereunder for those periods of performance in which access to licensed functionalities was not available; (ii) issue a "partial Acceptance" of the Application access with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

If the Authorized User and its Application Users are unable to access the licensed functionalities of the Application after a second set of acceptance tests, Supplier shall be deemed in default of the order. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Licensed Services to be provided thereunder by Supplier. Supplier shall accept return of any products provided to such Authorized User, and Supplier shall refund any monies paid by such Authorized User pursuant to the order, or portion thereof terminated. All costs of de-installation and return of product shall be borne by Supplier. This remedy is in addition to and not in lieu of any other remedies of the Authorized User set forth herein or available at law or in equity.

## 13. GENERAL WARRANTY

Supplier warrants and represents to VITA the Licensed Services and the Application described in Exhibit A as follows:

### A. Ownership

Supplier has the right to provide the Licensed Services, including access by any Authorized User and its Application Users to the Application, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

### B. Licensed Services, Application, and Documentation

Supplier warrants the following with respect to the Licensed Services and the Application:

- xxxix). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application shall be fit for the particular purposes specified by VITA in the RFP and in this Contract, and Supplier is possessed of superior knowledge with respect to the Application and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Licensed Services, including the Application;
- xl). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- xli). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract and any order issued hereunder, and the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product; and that such

Application and Licensed Services are compatible with and will operate successfully when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.

- xlii). The Application provided hereunder is at the current release level; older versions are not available;
- xliii). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- xliv). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- xlv). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

**C. Malicious Code**

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Application accessed by an Authorized User or its Application Users; and the Application does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to the Application by any Authorized User or its Application Users. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

**D. Access to Product and Passwords**

Supplier warrants that the Application and Licensed Services do not contain disabling code (defined as computer code designed to interfere with the normal operation of the Licensed Services or hardware or software of any Authorized User or its Application Users) or any program routine, device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other malicious code which is specifically designed to permit unauthorized access, delete, disable, deactivate, interfere with or otherwise harm the Application, Licensed Services or the hardware or software of any Authorized User or its Application Users. In addition, Supplier warrants that Authorized User and its Application Users will be provided commercially reasonable uninterrupted access to the Application and that Supplier will not cancel or otherwise terminate access to the Application by disabling passwords, keys or tokens that enable continuous use of the Application by the Authorized User and its Application Users during the term of this Contract or any order issued hereunder. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment.

**E. Open Source**

Supplier will notify all Authorized Users if the Application contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

**F. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**G. Supplier's Past Experience**

Supplier warrants that Supplier has provided the Licensed Services to a non-related third party customer of Supplier without significant problems due to the Licensed Services, the Application, or Supplier.

**THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.**

**14. RECORDS AND AUDIT**

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under any order issued pursuant to this Contract in support of its charges invoiced to Authorized User. Where applicable, the records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with such order. In addition, Supplier shall maintain accurate records of the Licensed Services, including but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section. Authorized User shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s). Supplier shall preserve such records for five (5) years after termination/completion of the Licensed Services agreed to under this Contract or any order issued hereunder.

**15. APPLICATION AND LICENSED SERVICES SUPPORT**

At any time during the term of any order issued pursuant to this Contract, Supplier shall provide the following Application Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User in order to ensure such Authorized User and its Application Users are able to access and use the Application in accordance with the Requirements.

**A. Coverage**

Twenty-four (24) hours per day, seven (7) days a week, Supplier provide to any Authorized User all reasonably necessary telephone or written consultation requested by such Authorized User in connection with use, problems and operation of the Application.

**B. Service Levels**

Supplier will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product and Documentation in accordance with the procedures identified below. In each case, Authorized User may describe the problem by telephone, facsimile or electronic mail or via a web site provided by Supplier. Supplier shall use its best efforts to meet Response Time and Resolution Time and other obligations under this Contract.

<b>Severity (Sample Problem)</b>	<b>Response Time</b>	<b>Resolution Time (Fix/work-around within)</b>	<b>Internal Escalation Procedure</b>
1 (Application down) <b>A severity 1 escalation would be classified as an issue that has caused the application to be unavailable and non-functional for all users across multiple networks.</b>	<b>Thirty (30) minutes</b>	four (4) hours	<b>[SUPPLIER TO COMPLETE]</b> <b>VIACK has multiple redundancy servers in place which will automatically failover in the event of a server outage. The servers themselves are located in a hardened facility, connected to 2 major</b>

			<p>ISP backbones, ensuring no one single event can cause a service failure. In the event of service failure, VIACK ITOPS personnel are all notified automatically via an emergency paging system, receiving problem reports as they happen, 24/7, so that they may provide an instant response to the issue. IT Ops notifies the CTO/EVP of Engineering and the Program Executive of any such failures to ensure senior executive level involvement as may be needed.</p> <p>It is highly unlikely that a customer would ever experience an outage or unavailability of the application before IT Ops had already been notified and resolved the matter. The redundancy built into our system that hosts the application is such that the client would not experience an outage.</p>
<p>2 (certain processing interrupted or malfunctioning but Application is able to process)</p> <p><b>A severity 2 escalation would be classified as the issues appearing with the Audio or Video related to connectivity, a specific feature not functioning, or an error occurring due to a bug in the software.</b></p>	<b>Four (4) hours</b>	twenty-four (24) hours	<p><b>An escalation is initiated when the VIACK Client Services organization is unable to resolve a reported trouble from an Authorized User or Application User without Tier III technical support. When escalation is required, Client Services requests assistance from the VIACK IT Operations team. If necessary, IT Ops will escalate the issue to the engineers and developers following</b></p>

			<p>their own internal procedures.</p> <ul style="list-style-type: none"><li>• As with any client issue, escalations will be documented in HEAT.</li><li>• The HEAT ticket will be updated at each step by the CSA or whoever is working the escalation.</li><li>• Escalations, via normal channels, will go through a Senior CSA or CS Manager. If all the above are unavailable, then an escalation can go directly to IT Ops.</li><li>• Escalations need to be assessed by Severity and by Priority. Priority is defined by <u>who</u> it is that is experiencing the issue. Severity is defined by the impact of the issue on the customer operations or on VIACK operations if an internal escalation.</li></ul> <p>When an escalation is necessary to resolve an issue, the CSA escalates the issue to a senior CSA. The senior CSA will examine the issue, ensuring there is no quick fix or other steps available to resolve the issue prior to escalating to IT Ops. Client Services will also work with the User to gather logs that will be analyzed to determine the actual technical problem. If no resolution is immediately available, the senior CSA escalates the issue to IT Ops using phone, pager, email, or VIA3,</p>
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		<p>and forwards all session logs to IT Ops and engineering. IT Ops will then respond within no more than 4 business hours with a possible solution or a request for more information. The senior CSA reviews the solution or request for more information with the CSA who received the customer request for assistance. The CSA then works with the User to apply the recommended solution or obtains the additional information requested by IT Ops or engineering. After contact with the client, the CSA reports the results to the senior CSA. If the issue is resolved by the solution provided, the CSA closes the HEAT ticket and the senior CSA reports to IT Ops that the issue has been resolved. If the issue isn't resolved, the senior CSA informs IT Ops and the information gathering process is repeated until the issue is resolved. The VIACK Vice President of Engineering and the VIACK CTO/EVP of Engineering oversee and are actively involved in highest level escalations through resolution.</p> <p>Through every step of the escalation process, the Program Executive is alerted and will intercede on the customer's behalf as appropriate to ensure</p>
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			customer satisfaction.
<p>3 (minor intermittent malfunctioning, Application able to process data)</p> <p><b>A severity 3 escalation is classified as a 3rd party hardware, desktop, network or software issue that is effecting VIA3 functionality. Examples of this type of escalation would be:</b></p> <p><b>Video not working due to old camera or outdated camera driver being used.</b></p> <p><b>Audio not working due to being improperly connected or a need to install sound hardware</b></p>	<p><b>Eight (8) hours</b></p>	<p>three (3) days</p>	<p><b>Escalation procedure steps</b></p> <p><b>1.CSA escalates the issue to a senior CSA.</b></p> <p><b>2.The senior CSA escalates the issue to IT Ops, only if appropriate, using phone, email, or VIA3.</b></p> <p><b>3. IT Ops responds within 4 business hours with a possible solution or a request for more information.</b></p> <p><b>4.The senior CSA reviews the solution or requests for more information with the CSA.</b></p> <p><b>5.The CSA attempts the solution with the client or obtains the additional information requested.</b></p> <p><b>6.The CSA reports the results to the senior CSA.</b></p> <p><b>7.If the issue is resolved by the solution provided, the CSA closes the HEAT ticket and the senior CSA reports to IT Ops that the issue has been resolved.</b></p> <p><b>8.If the issue isn't resolved due to 3rd party-related issues, the CSA will contact the customer with our findings and give the customer our best recommendation to resolve the issue, or direct the customer to the proper third-party support provider for further assistance.</b></p>



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The level of severity (e.g., 1, 2, 3), are defined in the table above and reported by Authorized Users.

### C. Application Evolution

Should Supplier merge or splinter the Application previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or support fees in order to access the Application, to enable its Application Users to access the Application, or to receive enhancements, releases, upgrades or support for the Application.

## 16. SERVICE LEVELS AND REMEDIES

Supplier's failure to make the Licensed Services Available to Authorized User and its Application Users at least 99% of the time in any given month during the term of such Authorized User's order, excluding scheduled maintenance, shall be deemed a service level default ("Service Level Default") and Authorized User may obtain the non-exclusive remedies set forth below. For purposes of this Contract, "Available" means that Authorized User and its Application Users are able to access all features and functions of the Application and Licensed Services required by Authorized User, including but not limited to the Application and Supplier Product.

Service Level (Monthly)	Service Level Credit (Prorated Fees – Monthly)
Above 99%	0
98.99 – 97%	10%
96.99 – 95%	25%
94.99 – 93%	50%
Below 93%	100% and, at Authorized User's sole discretion, termination of such Authorized User's order

In the event Authorized User is eligible for a 100% Service Level Credit under this Section during any given month of the term of such Authorized User's order, Authorized User may terminate such order without penalty upon written notice to Supplier and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after VITA or an Authorized User has given notice of termination pursuant to the Term and Termination section of this Contract or due to non-appropriation of funds, or Authorized User has made final payment to Supplier for the Application and Licensed Services and no further invoices shall issue as a result, Supplier shall refund to Authorized User the amount of the appropriate Service Level Credit due for the period of default.

### A. Reporting

Once each calendar month during the term of an order issued pursuant to this Contract, Supplier shall provide Authorized User with a written report that shall contain information with respect to the performance of the Application and Licensed Services, unless otherwise agreed upon by the Parties, and in conformity with the reporting Supplier provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to the Authorized User. If current customers do not receive monthly reports containing information with respect to the performance of the Application and Licensed Services, Supplier shall notify Authorized user of exceptions to service levels. Supplier and Authorized User may mutually develop performance reporting. Representatives of Supplier and Authorized User shall meet as often as may be reasonably requested by either Party, and mutually agreed upon, but no less often than once each calendar quarter, to review Supplier's performance of Licensed Services and the performance of the Application and to discuss technical plans, financial matters,

system performance, service levels and for any other matters related to this Contract or such Authorized User's order that may be reasonably requested by either Supplier or Authorized User. Authorized User may independently audit the report at its expense no more than two (2) times annually.

#### **B. Failure to Meet Service Level Commitments**

In the event that such Application fails to meet the Service Levels specified herein, Supplier will: (i) promptly replace the Application with an Application that conforms to this Contract and such specifications; (ii) repair the Application, at Supplier's expense, so that it conforms to this Contract and such specifications; or (iii) refund to Authorized User all fees paid for the Application and the Licensed Services after the failure of the Application to meet the Service Levels. In the event Supplier fails to comply with these remedies, Authorized User may exercise all available rights and remedies under law and equity.

#### **C. Escalation Procedures**

[To be provided by Supplier]

**An escalation is initiated when the VIACK Client Services organization is unable to resolve a reported trouble from an Authorized User or Application User without Tier III technical support. When escalation is required, Client Services requests assistance from the VIACK IT Operations team. If necessary, IT Ops will escalate the issue to the engineers and developers following their own internal procedures.**

- As with any client issue, escalations will be documented in HEAT.
- The HEAT ticket will be updated at each step by the CSA or whoever is working the escalation.
- Escalations, via normal channels, will go through a Senior CSA or CS Manager.
  - If all the above are unavailable, then an escalation can go directly to IT Ops.
- Escalations need to be assessed by Severity and by Priority.
  - Priority is defined by who it is that is experiencing the issue and Authorized Users may define special priority for individual users.
  - Severity is defined by the impact of the issue on the customer operations or on VIACK operations if an internal escalation.

When an escalation is necessary to resolve an issue, the CSA escalates the issue to a senior CSA. The senior CSA will examine the issue, ensuring there is no quick fix or other steps available to resolve the issue prior to escalating to IT Ops. Client Services will also work with the User to gather logs that will be analyzed to determine the actual technical problem. If no resolution is immediately available, the senior CSA escalates the issue to IT Ops using phone, pager, email, or VIA3, and forwards all session logs to IT Ops and engineering. IT Ops will then respond within no more than 4 business hours with a possible solution or a request for more information. The senior CSA reviews the solution or request for more information with the CSA who received the customer request for assistance. The CSA then works with the User to apply the recommended solution or obtains the additional information requested by IT Ops or engineering. After contact with the client, the CSA reports the results to the senior CSA. If the issue is resolved by the solution provided, the CSA closes the HEAT ticket and the senior CSA reports to IT Ops that the issue has been resolved. If the issue isn't resolved, the senior CSA informs IT Ops and the information gathering process is repeated until the issue is resolved. The VIACK Vice President of Engineering and the VIACK CTO/EVP of Engineering oversee and are actively involved in highest level escalations through resolution.

Through every step of the escalation process, the Program Executive is alerted and will intercede on the customer's behalf as appropriate to ensure customer satisfaction.

**17. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide Licensed Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

**18. CONFIDENTIALITY****A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

**B. Exclusions**

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

**C. Return or Destruction**

Supplier shall retain data files on its servers from each conference for ten (10) days after the completion of the conference. Ten (10) days after each conference, Supplier shall destroy all data files on its servers from that conference. At such time that Supplier audits and stores audio and/or video files on its servers, the same retention and destruction requirements shall apply. (Server-side auditing of audio sessions will be available in VIACK's next software release, generally available in March, 2008. Client-side auditing of audio sessions and auditing of video sessions are planned for release and general availability in March, 2009.) Such destruction of retained data files does not include the desktop log files and workspace files managed/owned by the Authorized User's designated account manager and individual Application Users. Users are responsible for destruction of files stored on their desktops in accordance with the policies of the Authorized User organization and/or VITA.

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Authorized User, Supplier shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Authorized User, or (b) upon written request from the disclosing Authorized User, destroy such Confidential Information and provide the disclosing Authorized User with written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

VITA or the Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies or, if Authorized User is not subject to such policies, in accordance with such Authorized User's own records retention policies.

#### **D. Certification**

The Supplier Program Executive, with duly authorized signature authority and who shall be covered by Directors and Officers insurance required under that section titled "Insurance," shall certify such compliance with all security and confidentiality obligations under this Contract on an annual basis no later than each anniversary of contract execution. Additionally, the Supplier Program Executive shall certify the destruction of data files for each conference as provided in "Return or Destruction" above. Supplier shall deliver certifications to the Authorized User no later than one month after destruction or as is otherwise requested by the Authorized User. Certification of destruction may be aggregated for multiple conferences.

### **19. LIABILITY AND INDEMNIFICATION**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Application or the Licensed Services, (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by the Application or any of the Licensed Services, or (vi) loss of Content provided to Supplier due to Supplier's failure to back up Content in accordance with the Contract. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Application or that the provision of Licensed Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by the Application or any of the Licensed Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users and their Application Users the right to continue use of such infringing Application or Licensed Services, or any component thereof; or (b) replace or modify such infringing Application or Licensed Services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Application or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product or service in the

event such Authorized User cannot use the affected Application. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Application or Licensed Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, AND LOSS OF CONTENT DUE TO SUPPLIER'S FAILURE TO EXECUTE ITS OBLIGATIONS TO BACK UP SUCH CONTENT, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

## **20. INSURANCE**

In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry either errors and omissions insurance coverage in the amount of \$2,000,000 per occurrence. or Directors & Officers insurance coverage in the amount of at least \$1,000,000.

## **21. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at <http://www.vita.virginia.gov/library/default.aspx?id=537>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section.

## **22. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this

Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

### **23. STEERING COMMITTEE**

In order to facilitate mutually beneficial contractual relationships with suppliers, VITA has procedures for establishing a steering committee ("Steering Committee"), which will consist of senior management personnel, including personnel involved in the contractual relationship, from VITA and Supplier.

Roles of the Steering Committee will include but not be limited to a) identifying potential issues which may arise during the performance of a contract, b) discussing and assigning roles and responsibilities, c) establishing methods for quickly resolving potential disputes, d) setting rules for communication and decision making, e) monitoring and measuring the business relationship between the parties, and f) acting as a final decision board for escalated problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the end goal of developing relationships to avoid conflict. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

The Steering Committee will meet within thirty (30) days of the Effective Date of this Contract and will meet annually thereafter during the term of the Contract, including any extension thereto. One or more additional meetings may be held at any time during the Contract term, should VITA, at its sole discretion, determine that a meeting(s) would be beneficial to the contractual relationship, and Supplier agrees to participate in such meeting(s). In addition, Supplier may at any time submit a written request to VITA for a meeting of the Steering Committee, which VITA will not unreasonably deny.

Supplier shall ensure the availability of the appropriate personnel to meet with the VITA contract management team. Additional Steering Committee meetings involving representatives from VITA, the Supplier, and an Authorized User may be required prior to or during performance on any specific Statement of Work issued pursuant to this Contract.

### **24. GENERAL PROVISIONS**

#### **A. Relationship Between VITA and Authorized User and Supplier**

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

#### **B. Incorporated Contractual Provisions**

The contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, that are hereby incorporated by reference:  
<http://www.vita.virginia.gov/procurement/documents/MandatoryContractTsandCs.pdf>

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at <http://www.vita.virginia.gov/procurement/documents/eVATsandCs.pdf> are also incorporated by reference.

The terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, changes in VITA policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically.

**C. Compliance with the Federal Lobbying Act**

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit F hereto.

**D. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

**E. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days. The decision of the relevant public body shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures, if any, at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

**F. Advertising and Use of Proprietary Marks**

Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

**G. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

**H. No Waiver**

Any failure to enforce any terms of this Contract shall not constitute a waiver.

**I. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**J. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**K. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**L. Survival**

The provisions of this Contract regarding License, Warranty, Escrow, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**M. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

**N. Remedies**

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA and all Authorized Users reserve any and all other remedies that may be available at law or in equity.



**O. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Application or any components thereof and Licensed Services rendered or the amounts due Supplier for such services under this Contract. VITA's right to audit shall be limited as follows:

- xlvi). Three (3) years from Software delivery or Service performance date;
- xlvii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- xlviii). Excludes access to Supplier cost information.

In no event shall Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

**P. Entire Contract**

The following Exhibits, which will be completed during the negotiation process, including all subparts thereof, may be attached to this Contract and those applicable will be made a part of this Contract for all purposes:

- xlix). Exhibit A Application and Licensed Services Requirements
- l). Exhibit B Application Options List; Fees, Licensed Service Charges, and Payment Schedule
- li). Exhibit C-1 Application Escrow Agreement [Reserved]
- lii). Exhibit C-2 Content Escrow Agreement Template [Reserved]
- liii). Exhibit D Statement of Work (SOW) Template [Reserved]
- liv). Exhibit E End User Licensing Agreement (for reference only)
- lv). Exhibit F Certification Regarding Lobbying
- lvi).

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: This Contract, an applicable SoW and any other Order document executed by both parties.]

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement include any terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect.

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Supplier

By: Rusty Swartz

(Signature)

Name: Rusty Swartz

VITA

By: Philip L. Pippert

(Signature)

Name: Philip L. Pippert

VITA WBVCS Application Service Provider Contract

Appendix A

Page 32 of 50

(Print)

Title: President &amp; Chief Operating Officer

Date: 5/20/08

(Print)

Title: ASSOC. DIRECTOR, SCMDate: 5/27/08

Address for Notice:

VIACK Corporation

14811 N. Kierland Boulevard, Suite 100

Scottsdale, Arizona 85254

Electronic notification: [rswartz@viack.com](mailto:rswartz@viack.com); [amfadida@att.net](mailto:amfadida@att.net)

Address for Notice:

Attention: Rusty Swartz, President &amp; Chief Operating Officer

Attention: Contract Administrator

## 25. EXHIBIT A: APPLICATION AND LICENSED SERVICES REQUIREMENTS

### VIA3 Assured Collaboration Service (VIACK-hosted service)

#### Product Description:

VIA3 is a web-based, completely integrated, fully secure, end-to-end encrypted online desktop collaboration and videoconferencing solution. VIA3 enables designated communities of interest to exchange information and facilitate online sessions with colleagues, citizens and business partners anywhere, working together as easily and effectively as if they were in the same conference room. Services include CD-quality audio, high-quality video, instant messaging, text chat, information sharing and secure workspaces and file storage.

Use of VIA3 within and across organizations results in dramatic savings in downtime, travel and administrative expenses, enhanced productivity and more responsive service to the citizens. These benefits are delivered without the complexities, limitations and add-on costs of other online or teleconferencing systems.

VIACK brings a unique combination of fully integrated collaboration capabilities and security and encryption that no other vendor in the market offers. VIA3 is a permission-based/privilege-based application for authorized users. Its cryptographic module is FIPS 140-2 certified by NIST, and all sessions employ AES and SSL for the greatest level of security and protection of data. Unlike many other web-based videoconferencing solutions, VIA3 does not require separate purchase of instant messaging solutions, telephony services, and/or data collaboration tools. All of these capabilities reside within one cost-effective application. Included within this offering:

- ▶ 24/7 access to VIACK-hosted VIA3 web-based videoconferencing application
- ▶ Unlimited use of the VIA3 Secure Instant Messaging and Workspace services
- ▶ 24/7 Client Services support
- ▶ Worldwide connectivity with full audio, video and data capabilities
- ▶ Hosted online meetings anytime – scheduled or ad hoc
- ▶ Temporary users
- ▶ Large-scale meetings
- ▶ 24/7 access to concise, user-friendly online help and education
- ▶ 30 MB of encrypted file storage with each seat
- ▶ Additional storage available for purchase in 100 MB, 1 GB and 10 GB blocks
- ▶ Online self administration
- ▶ Dedicated CARE & account management services
- ▶ Software upgrades
- ▶ Economical concurrent seat model—each VIA3 seat license subscription provides four registered users\*

\* (model is based on no more than the number of purchased seats in meetings concurrently, all other features can be used by all users concurrently; example-agency has purchased 200 seat licenses for up to 800 users—all 800 users may use IM, access files in workspaces, etc. at any time, but only 200 users may be in meetings concurrently; if on a monthly basis the number of users in meetings consistently exceeds the number of purchased seat license subscriptions, VIACK will work with the customer to analyze additional seat license requirements)

**Features and Services include:**

- ▶ Video: See and meet with all of the other session participants in real time
- ▶ Audio: Use near CD-quality audio delivered over the Internet to hear others without the need for a separate phone connection
- ▶ Instant Messaging / Group Chat: Quickly and securely send and receive text messages
- ▶ Security: Protect your meetings and files with the strongest, most comprehensive encryption system in the market today; FIPS 140-2 certified cryptographic module; VIA3 uses AES (Advanced Encryption Standard)
- ▶ Contact Management: Check availability status, display a custom message, and easily add new users
- ▶ Live View: Allow others to view anything on your computer in real time including a software application, the entire screen or just a particular region of your screen
- ▶ Application Sharing: (administrable) Share any software application with the ability to take back control at any time
- ▶ Application Viewing: Share any software application in a view-only mode—no remote control
- ▶ Workspaces: Securely store and share files with others, making sensitive documents available to only those that you grant permission
- ▶ Whiteboard: Visually express ideas and comments with the ability to brainstorm, draw, mark-up and save graphical information
- ▶ Large Meetings: Schedule meetings from Microsoft Outlook, invite up to 1,000 attendees including temporary users
- ▶ Voting and Polling: Gather visual and instant feedback within your VIA3 meeting
- ▶ Account Management: Add or remove members, enable logging and auditing, view meeting activity and add co-branding
- ▶ 508 Compliance: Provides accessibility to VIA3 for all users
- ▶ 24/7 client services support for VIACK-hosted services, online training modules and customized training and education services

**New Enhancements:****Workspaces Enhancements**

- ▶ No separate logon required for workspaces
- ▶ 10 min timeout session now increased to 24 hours
- ▶ Support for Microsoft Office 2007
- ▶ Version history
- ▶ Add multiple members by e-mail
- ▶ Notifications (added to workspace)

**Meeting Improvements**

- ▶ Schedule meeting replacement (using iCal)
- ▶ Start a meeting from within a workspace
- ▶ Improved usability for scheduling meetings+
- ▶ Improved Join Meeting page+
- ▶ Enhanced single-step “open and edit” functionality of Microsoft Office files within a workspace

**Meeting Enhancements**

- ▶ Improved meeting dialog
- ▶ Easily invite unregistered users to a meeting after it has started

**VIA3 Messenger Improvements**

- ▶ File transfer
- ▶ Interoperability between VIA3 domains
- ▶ Interoperability with Jabber IM clients
- ▶ Change user name appearances in your contact list
- ▶ Support for multi-user chat sessions (outside of meetings)

**Meeting Manager Improvements**

- ▶ More control over video windows
- ▶ Host can hide his/her own window+
- ▶ More efficient use of screen real estate+
- ▶ Improved usability+
- ▶ Support for Windows Vista
- ▶ Record and Playback (Server-side Auditing)

**Archiving Improvements**

- ▶ Instant messages, multi-user messages and meeting history will be archived
- ▶ Ability to search messages
- ▶ Meeting details page (recent meetings)

**Client Services Support and Training and Education Services:**

(Included in the price of the monthly seat license subscription for VIACK-hosted VIA3 Assured Collaboration Service)

**Client Services Technical Support:**

VIA3 Client Services Support is provided through a technical help desk and support structure provided directly by VIACK. Being available for our clients when they need us and assisting clients in both questions and technical issues is important to us, as our clients' satisfaction and operational success is our utmost goal. We respond to any issue upon receipt of a trouble call and typically resolve these matters within 4 hours of the time the trouble is reported.

VIACK Client Services Support is available 24 hours a day/7 days a week to assist our clients with anything they need. We are happy to provide session monitoring, and dedicated support during live sessions is available with advanced notice.

The VIACK corporate website <http://www.viack.com> includes the following information that may be useful in answering many first level questions that may arise.

VIACK Training Products and Services <http://www.viack.com/training/>

Support FAQ <http://www.viack.com/support/faq.asp>

Product FAQ <http://www.viack.com/product/faq.asp>

Recommended system requirements <http://www.viack.com/product/specs/requirements.asp>

Compatible hardware [http://www.viack.com/product/specs/compatible\\_hw.asp](http://www.viack.com/product/specs/compatible_hw.asp)

Clients may also submit a help request online at: [https://www.viack.com/support/help\\_request.aspx](https://www.viack.com/support/help_request.aspx)

lvii).

VIACK Client Services Analysts are experts in the set-up, installation and operation of VIA3 software. Each Analyst is fully capable of handling advanced issues as well as day to day questions and concerns

about the VIA3 software and receives training on all new features and functions that VIACK delivers. Our IT Operations management is also fully trained and expert in all aspects of VIA3 architecture, design and implementation and maintenance.

The VIACK Client Services team values our clients' satisfaction and success as our highest concern. In order to maintain our rapid response and resolution for our clients, we will hire additional personnel as business volume demands.

- a). When it is necessary to escalate an issue to our Tier III IT Operations, Engineering and Development resources, VIACK makes the process as quick and painless as possible. Clients may contact our Client Services department at any time to report a service issue via phone (866-265-8060) or email ([support@viack.com](mailto:support@viack.com)) or submit a request online ([https://www.viack.com/support/help\\_request.aspx](https://www.viack.com/support/help_request.aspx)). Once a service issue is reported, Client Services will make every attempt to resolve the service issue on the first contact. If the service issue moves to an escalation, Client Services will gather data on the problem and escalate it to the VIACK IT Operations team within 4 hours of the report of the service issue.
  - b). Each member of our Client Services staff is highly knowledgeable in VIA3 as well as Windows environments. All contacts to Client Services are responded to within 4 hours of entry, and many of these are resolved within a first contact basis. Reported troubles that reach beyond a 4-hour resolution point, are escalated to our IT Operations/Engineering and Development team.
  - c). When a service issue is reported, Client Services will first make sure that there is a full understanding of the service issue, and will then attempt to reproduce the service issue with the client. Once reproduced, Client Services will troubleshoot the service issue until resolution, at which point Client Services will duplicate the reproduction steps and ensure the service issue does not occur again, all while remaining in constant contact with the client.
  - d). VIACK Engineering and IT Operations personnel constantly monitor the VIA3 Assured Collaboration Service (VIACK-hosted). If and when a service outage were to be recorded, IT Operations personnel--available on a 24/7 basis, 365 days a year--will quickly react provide the necessary support. IT Operations personnel regularly monitor server CPU utilization; network connectivity; and disk space and database diagnostics. Hot Standby databases are also constantly measured to ensure connectivity of data and availability. VIACK will utilize our extensive trouble ticketing system to log all service issues.
- For the VIACK-hosted VIA3 Assured Collaboration Service, VIACK IT Operations staff will maintain the system in good working order throughout the contract term.

Software upgrades are easily activated from a Public Internet site. Users will automatically receive the latest version of VIA3 each time they log on to the VIA3 service at <https://www.viack.com/via3>. There are no additional charges for updates or new releases during the term of this contract.

#### CARE Team Support Services:

When it comes to software implementation, one size does not fit all. At VIACK we created the CARE (Client Adoption, Retention and Education) Team to address each customer's needs and to provide a comprehensive implementation approach that places the end-user at the center of our efforts. Included on the CARE team are representatives from the Education, Product Marketing, Client Services, Sales Operations, Sales and Marketing Communications Departments within our Corporate Business Development organization. Our implementation approach is unique in the industry and our training products are superior.

#### Implementation Approach



As each new client comes aboard, a CARE team representative meets with them to discuss how best to implement VIA3 within their organization. From this meeting, an implementation plan emerges, a timeline is set and the process begins. A typical implementation plan will include the following:

#### Welcome & Overview

After the VIA3 delivery order has been signed, your VIACK representative will introduce you to your VIACK CARE team. During the course of the first 30-days, your VIACK representative will work directly with you and with the VIACK CARE team to ensure an effective implementation is planned, set-up, and executed with the target user group.

#### Planning

At this step in the process, your VIACK representative will have an understanding of what you would like to accomplish with VIA3. Before the implementation can begin, the following will be coordinated with you:

- Users identified
- Equipment needs (headsets and web cameras) identified
- Set-up, installation and orientation activities scheduled
- Internal communication requirements explored (creating awareness and buy-in)
- Training needs identified (free online courses, or for-fee in-person and custom packages)

#### Equipment

To use the audio feature in VIA3, each user will need a full duplex sound device (soundcard or main board sound chip) and a headset/hands-free device (fitted with a microphone) designed for use with PCs for audio exchanges during meetings.

To use the video feature in VIA3, each user will also need a web camera. A list of hardware models that have been successfully tested and found compatible with VIA3 is maintained on our website, ([www.viack.com](http://www.viack.com)). This list includes both new and old models. Other models may or may not work with VIA3. A VIACK Client Services Analyst, product marketing manager or engineer is also available to assist with the selection of this equipment and to offer advice as to its installation.

#### User Orientation & Training

Behavior change and adoption are the critical factors in any new software package rollout. People learn software by trying it out, by using it and by receiving support at key points in the process. The suggested VIA3 orientation and training program incorporates the following process:

**Guided Set-up & Orientation** – We guide users through the set-up, installation and orientation procedure, scheduled at a time of convenience.

**Self-Paced Online Modules** – VIACK's self-paced online training tutorials take a show-and-tell approach that incorporates narration, animated graphics and life-like interactions designed to give users practical experience using VIA3. For new VIA3 users, several modules are available. After the orientation session, each user will be able to independently join or start a VIA3 meeting; we encourage users to begin using VIA3. We also recommend that users go to our website and review our online tutorials under our VIA3 Training section.

**Practice & Support** – Several VIACK Client Services Analysts and other associates will have been added to the user's contact list during the orientation process, enabling immediate access to support and expertise.

Meeting – We encourage users to set a “target meeting” that will serve as the test run for implementing VIA3. Often it is a weekly staff or project meeting.

#### Owner Orientation & Training

VIA3 Account Owners have special access to administrative services through the website. The account owner orientation includes a complete hands-on review of all the resources available to manage your VIA3 account. The content covered includes:

- Account information

- Account usage monitoring

- User management

#### Internal Marketing

All Web meeting systems are not created equal—they vary considerably in features, functionality and ease of use. Implementing a new software solution begins with creating awareness about its value, its use and its application. The VIACK CARE Team can provide marketing materials for this purpose and others.

#### Use & Adoption

At this step in the process, all of the users have had their equipment and VIA3 software running and they have been oriented to its effective use. VIA3 meetings are scheduled, held and evaluated. The VIACK CARE team will be available to support your meeting activities should issues arise.

#### Account Review

Once the user account has been activated, initial implementation completed, and the adoption phase has begun, the VIACK account team will provide information about the overall status of the VIA3 implementation. Depending on the size and scope of the implementation, these review meetings occur at regular intervals like 30, 60 and 90 days.

Specifically, the review meetings will cover:

- Status on the user set-up and orientation process

- Usage reports

- Assessment of the progress in relationship to stated goals

Your VIACK representative will continue to work directly with you and with the VIACK CARE team to further validate the usability and applicability of VIA3 within your organization as further adoption takes place.

#### Training and Education Services:

The adage that people learn in different ways has never been more true than it is today. With current technologies, we can now create learning activities that adapt to more individual learning styles than ever before. To make the most of VIA3, it takes skilled guidance in using collaboration tools within your specific profession. VIACK's Training and Education team offers in-person and online educational venues to teach users how to smoothly integrate VIA3 into their daily work style. This educational portfolio includes online education, on-site education, and customization capabilities. All of the online materials are backed with a Learning Management System (LMS) to allow users to easily sort through and get the training they need, while tracking progress and book marking where they last left off. VIACK goes far beyond software training, teaching effective online meeting and collaboration practices that deliver results



and help users become familiar with VIA3 as an everyday office tool – a convenience users can turn to as easily and instinctively as their phone.

At VIACK, we offer our clients a comprehensive list of training options, from self-paced online modules to in-person based orientations. Get the training you need, when you need it and in a form most comfortable for you. Some of this training is provided as part of the pricing of the software; additional and enhanced training services may be purchased.

### Online Training

VIA3 online training takes a show-and-tell approach that incorporates narration, animated graphics and life-like interactions designed to give the user practical experience using the software. VIA3 online training is available around the clock, free of charge, and is organized into six short tutorials.

#### How to Use VIA3 Online Training (2 – 4 minutes)

Learn how to navigate through the online modules to get the most out of your VIA3 training.

#### VIA3 Launchpad (10 – 15 Minutes)

The VIA3 Launchpad is the initial window that is displayed when a user logs on to VIA3. It is where all of VIA3 meeting "housekeeping" is done, including adding Contacts, and accepting meeting invitations and accessing Workspaces. In this module, we will explore the VIA3 Launchpad and the features most commonly used to prepare for and conduct VIA3 meetings.

#### VIA3 Meeting Manager (10 – 15 Minutes)

The Meeting Manager is the window that opens when a meeting is started. In this module, we will explore the VIA3 Meeting Manager Window and the tools most commonly used to conduct secure communication.

#### Workspaces in VIA3 (10 – 15 Minutes)

A Workspace is a secure web-based portal designed to connect users, processes and information all in one easy to use site. In this module, the user will learn how to use the Workspace feature including: how to log on, manage members, add files, set alerts, post discussion topics, and organize meetings.

#### Live View and Application Sharing in VIA3 (10 – 15 Minutes)

Live View in VIA3 is an application viewing tool that has the additional capability of enabling application sharing. With Live View, two or more users can see the same application and, if needed and permission is granted, share control. In this module, the user will learn how to use the Live View feature including: how to initiate a session, choose the appropriate screen display mode and begin the application sharing feature.

#### Whiteboard in VIA3 (10 – 15 Minutes)

The Whiteboard tool allows the user to create, display, and capture images that can enrich your online meetings. In this module, the user will learn how to use the Whiteboard tools for drawing lines, shapes, performing screen captures, and adding background images.

### User Orientation Sessions

The purpose of the VIA3 orientation session is to provide new users with a brief overview of the software, to highlight the most commonly used tools and to enable them to readily join meetings. Client Services personnel will guide new users through a pre-scheduled 15 – 20 minute session and provide them with enough knowledge and experience to feel comfortable joining a VIA3 meeting. Sessions with multiple users are encouraged.

### Online "Context Sensitive" Help File

Developed with the industry standard program RoboHelp, the VIA3 Help File is easily accessed by pushing the F1 key on a keyboard. This valuable resource is programmed with "context sensitivity" and will open to the specific content within the Help File that is related to where the user is within the VIA3 software.

Additionally the VIA3 Help File was designed with interactive graphics that provide users with a visual reference point for appropriate content. For example, one mouse click on the "Meet" icon will lead them to the appropriated content within the Help File. Any page within the Help File can be easily printed for later reference or users can print then entire Help File for use as a User's Guide.

### Overview of Optional Customized Training (Fee-Based)

If desired by the Authorized User, VIACK offers additional training services, specially tailored to the needs of individuals, departments, and organizations, that may be purchased in addition to the training and education services that are included in the monthly seat license subscription referenced above.

#### Private Training

VIA3 private training packages are offered at a per-person hourly rate to accommodate any schedule, learning type and budget. The minimum session is one hour long. All sessions are highly interactive, hands-on and focused on getting the users comfortable with the basics of the VIA3 software. All session are conducted in VIA3 and will be limited to five people (+/-) per group.

#### Train-the-Trainer

The train-the-trainer program is designed for those organizations who intend to deliver VIA3 user training through their own staff. The program is broken down into two parts: the needs assessment and the train-the-trainer session - each having its own hourly rate. Limit 3 trainees per session.

#### Product Support Training "Help Desk"

The Support Training/Help Desk program is designed for those organizations who intend to support their VIA3 users with their own staff. The program is broken down into two parts: a needs assessment and the support training session - each having its own hourly rate. Limit 3 trainees per session.

#### Instructional Design and Customization Services

VIACK's Education Department can provide instructional design services to customize any of the existing courseware or standard offerings or develop a unique solution tailored to your organization's needs. The service is broken down into two parts; a needs assessment and the instructional design development - each having its own hourly rate.

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**26. EXHIBIT B: APPLICATION OPTIONS LIST; FEES; LICENSED SERVICE CHARGES; PAYMENT SCHEDULE IS ATTACHED. SEE EXCEL SPREADSHEET ENTITLED EXHIBIT B.**

**EXHIBIT C-1 AND EXHIBIT C-2**

**[RESERVED]**

**27. EXHIBIT D – STATEMENT OF WORK TEMPLATE --- SEE ATTACHED TEMPLATE**

Note! Any document in substantially the form of Exhibit D to this Contract which, upon signing by both Parties to the agreement, shall be deemed a part of this Contract, and which describes the deliverables, due dates, duration, and payment obligations for a specific project or engagement in which Supplier shall provide the Licensed Services, including access to the Application(s), to an Authorized User and its designated Application Users. Any Statement of Work shall constitute an order. **Follow instruction in gray to utilize the template.**

**28. EXHIBIT E: SUPPLIER CONTRACT ADDENDUM**

The Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and VIACK Corporation ("Supplier"), a business incorporated in Delaware, F.E.I.N. 86-0996505, having its principal place of business at 14811 N. Kierland Boulevard, Suite 100, Scottsdale, Arizona, 85254, are this day entering into a contract and, for their mutual convenience, the parties are using the "VIACK End User License Agreement ("Supplier's standard form contract") provided by Supplier and amended hereunder by the Parties. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contract and together shall govern the use of any and all VIA3 Assured Collaboration Service Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract. If Supplier is not a U.S.-based entity, Supplier maintains a registered agent and a certification of authority to do business in Virginia.

This contract is executed by VITA on behalf of all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia, and hereinafter referred to as "Authorized Users." If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, any license granted by Supplier shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, such license shall be held by that public body.

As used herein, the term "contract" shall mean the Supplier's standard form contract and any and all exhibits and attachments thereto. The term(s) "Customer," "You," and/or "you," as used in the contract, shall mean, as applicable, VITA, the Commonwealth, any Authorized User, or any of their officers, directors, agents or employees.

This WBCVS and the Supplier's standard form contract, as modified hereby, constitute the entire agreement between the parties in relation to the Software and may not be waived or modified except by written agreement between the parties. In the event of conflict between the Supplier's standard form contract and the WBVCS Contract, the WBVCS Contract shall govern.

Supplier's standard form contract is, with the exceptions noted herein, acceptable to VITA. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard form contract cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Supplier's standard form contract, none of the following shall have any effect or be enforceable against VITA, the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents:

- lviii). Requiring or stating that the terms of the Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
- lix). Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
- lx). Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
- lxi). Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA before the contract is considered in effect;
- lxii). Delaying the acceptance of the contract or its effective date beyond the date of execution;
- lxiii). Requiring any total or partial compensation or payment for lost profit or liquidated damages by VITA, the Commonwealth, any Authorized User, or their officers, directors, employees or agents if the contract is terminated before its ordinary period;
- lxiv). Permitting termination by Supplier of the contract or the licenses granted thereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction;
- lxv). Defining "perpetual" license rights to have any meaning other than license rights that exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract; if Supplier-hosted licenses are subscription-based, they are only perpetual throughout the term of the contract and are not available to the Authorized User beyond the period of performance for which the service has been paid;
- lxvi). Permitting unilateral modification of the contract by Supplier;

- lxvii). Permitting modification or replacement of the contract pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides to any Authorized User an update or upgrade subject to additional payment, such Authorized User shall have the right to reject such update or upgrade;
- lxviii). Requiring purchase of a new release, update, or upgrade of Software or subsequent renewal of maintenance in order for the Commonwealth, VITA, or any Authorized User to receive or maintain the benefits of Supplier's indemnification of the Commonwealth, VITA, or such Authorized User against any claims of infringement on any third-party intellectual property rights;
- lxix). Imposing any interest charge(s) contrary to that specified by §2.2-4347 et seq. of the Code of Virginia;
- lxx). Requiring the Commonwealth, VITA, or any Authorized User to maintain any type of insurance either for the benefit of the Commonwealth, VITA, or such Authorized User or for Supplier's benefit;
- lxxi). Granting Supplier a security interest in property of the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents;
- lxxii). Requiring the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
- lxxiii). Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of VITA or any Authorized User;
- lxxiv). Limiting or adding to the time period within which claims can be made or actions can be brought;
- lxxv). Limiting selection and approval of counsel and approval of any settlement in any claim arising under the contract and in which the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents is a named party;
- lxxvi). Binding the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
- lxxvii). Obligating the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to pay costs of collection or attorney's fees;
- lxxviii). Limiting the liability of Supplier for property damage or personal injury or for its duty to indemnify, defend and hold harmless the Commonwealth.
- lxxix). Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
- lxxx). Prohibiting the Commonwealth, VITA, or any Authorized User from transferring or assigning to any entity the contract or any license to Software pursuant to the contract;
- lxxxi). Permitting Supplier to assign, subcontract, delegate or otherwise convey the contract, or any of its rights and obligations thereunder, to any entity without the prior written consent of VITA except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees in writing to be bound by the terms and conditions set forth in the contract and provided such third party is a U.S.-based entity or maintains a registered agent and a certification of authority to do business in Virginia, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
- lxxxii). Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of VITA or any Authorized User;

- lxxxiii). Permitting Supplier to access any Commonwealth or Authorized User records or data, except pursuant to court order;
- lxxxiv). Permitting Supplier to use any information provided by the Commonwealth or any Authorized User except for Supplier's own internal administrative purposes;
- lxxxv). Requiring the Commonwealth, VITA, or any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
- lxxxvi). Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia.

The parties further agree as follows:

- lxxxvii). The contractual provisions at the following URL are mandatory provisions, required by law or by VITA, that are hereby incorporated by reference:  
<http://www.vita.virginia.gov/procurement/documents/MandatoryContractTsandCs.pdf>
- lxxxviii). The terms and conditions in documents posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or a change in VITA policy. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.
- lxxxix). The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.
- xc). The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this contract only to the extent required by §59.1-501.15 of the Code of Virginia.
- xcj). Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
- xcii). The Commonwealth does not waive its sovereign immunity or its immunity under the Eleventh Amendment.
- xciii). The Commonwealth is tax exempt and shall not be responsible for payment of taxes, duties, or penalties.
- xciv). Supplier warrants that it is the owner of the Software or otherwise has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
- xcv). Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Software, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all



cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

- xcvi). Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software in order to perform such functions. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, contractor, or subcontractor of an Authorized User during the performance of Services by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.
- xcvii). The term of the contract shall be co-terminous with the WBVCS Contract. The term and termination provisions of the WBVCS Contract shall supersede those of the Supplier's standard form contract.
- xcviii). Nothing in this contract shall be construed as conveying any rights or interest in Commonwealth or Authorized User data to Supplier.
- xcix). The currency which shall be used for this contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars.
- c). Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
- ci). All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, VITA may terminate, in whole or in part, this contract or any order, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations.
- cii). The transmission, recordation and storage of meetings and proceedings of Public Bodies by Authorized Users, facilitated by the Software and Services provided under the WBVCS Contract shall be deemed Acceptable Use under Supplier's Acceptable Use Policy.
- ciii). Either party's cooperation under paragraph 21 ("Further Assurances") of the Supplier's standard form contract shall be subject to applicable law or regulation, including case law or order.
- civ). The Section 24. E. of the WBVCS shall apply in lieu of paragraph 23 ("Arbitration") of the Supplier's standard form contract.
- cv). An Authorized User may require that Supplier personnel submit to a criminal background check prior to performance of any services under this contract.

This contract has been reviewed by staff of VITA. Its substantive terms are appropriate to the needs of VITA and sufficient funds have been allocated for its performance by VITA.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

Supplier

VITA

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Supplier

By: 

(Signature)

Name: Rusty Swartz

(Print)

Title: President &amp; Chief Operating Officer

Date: 4/18/08

VITA

By: 

(Signature)

Name: PHILIP L. PIPPERT

(Print)

Title: 4/24/08

Date:

**29. EXHIBIT F: CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- cvi). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- cvi). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- cvi). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:

R. L. Swartz

Printed Name:

Rusty Swartz R. K. Swartz

Organization:

VIACK Corporation

Date:

4/18/08

### **30. EXHIBIT G: ADDITIONAL SECURITY AND CONFIDENTIALITY REQUIREMENTS**

## EXHIBIT D – STATEMENT OF WORK TEMPLATE

**EXHIBIT D**  
**CONTRACT NUMBER VA-080424-VIAK**  
**BETWEEN**  
**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**  
**AND**  
**VIACK CORPORATION**

Exhibit D is hereby incorporated into and made an integral part of Contract Number VA-080424-VIAK (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and Supplier (“Supplier”).

In the event of any discrepancy between this Exhibit D and Contract No. VA-080424-VIAK provisions of Contract No. VA-080424-VIAK control.

[Note: Instructions for using this template to draft a Statement of Work are in gray. These instructions should be deleted after the appropriate text has been added to the Statement of Work. Contractual language is not in gray and should remain in the document. Text that is highlighted in blue is contractual language that is variable based on the nature of the project. Text that is highlighted in green is deemed non-negotiable and may not be modified by the Authorized User without VITA’s consent.]

[Authorized User should delete the title “Exhibit D – Statement of Work Template” prior to issuing this SOW.]

### STATEMENT OF WORK

This Statement of Work is issued by Authorized User, hereinafter referred to as “Authorized User”. The objective of the project described in this Statement of Work is for the Supplier to provide the Authorized User with [describe the services] services (“Services”).

#### 1. PROJECT SCOPE AND REQUIREMENTS

Provide information on the scope of the project and the Authorized User’s requirements for this particular engagement including:

- i). [For SOWs issued under an Advanced IT Resources contract, Authorized User MUST include:] Approved IT Agency Procurement Request (APR) number
- ii). Project Name
- iii). general description of the Services
- iv). project boundaries
- v). Authorized User-specific requirements
- vi). special considerations for implementing technology at Authorized User’s location(s)
- vii). other characteristics of this project that must be addressed to insure the success of the engagement

#### 2. ADDITIONAL CONTRACT SERVICES TO SUPPORT THE REQUIREMENTS

##### A. Training and Knowledge Transfer

Provide an overview of training services to be provided to the Authorized User and any special requirements for specific knowledge transfer to support the Authorized User’s successful utilization of Service Deliverables.

**B. Support**

Document the level of support, as available under the Contract, required by the Authorized User to utilize the Service Deliverables. This may include conversion support, legacy system integration, transition assistance, or other specialized consulting.

**3. PROJECT EVENTS AND TASKS**

Provide a high-level overview of project events and tasks to be accomplished to perform the required Services.

**4. PERIOD OF PERFORMANCE**

The period of performance for Services shall be [start date] to [end date] and may be extended, pursuant to and unless otherwise specified in the Contract.

**5. PLACE OF PERFORMANCE**

Tasks associated with this engagement will be performed at the Authorized User's location(s) in [redacted], Virginia, at Supplier's location(s) in [Wherever], or other locations as required by the effort.

**6. MILESTONES, DELIVERABLES, PAYMENT SCHEDULE, AND HOLDBACKS**

The following table identifies milestone events and deliverables, the associated schedule, any associated payments, any retainage amounts, and net payments.

Milestone Event	Deliverable	Schedule	Payment	Retainage	Net Payment
Project kick-off meeting	---	Execution + 5 days	---	---	---
Site survey	Site survey report	Execution + 10 days	---	---	---
Draft of requirements	Requirements draft	Execution + 20 days			
Final documentation of requirements	Final requirements document	Execution + 20 days	---	---	---
Training	Training manual	Execution + 30 days			
Customer training	---	Execution + 30 days			
Project completion	Final report	Execution + 45 days			

The total price for Services shall not exceed \$US XXX.

Supplier's invoices shall show retainage of ten percent (10%). Following completion of Services, Supplier shall submit a final invoice to the Authorized User, for the final milestone payment amount plus the total amount retained by the Authorized User.

Required Deliverables are as follows: [Provide a description of all Deliverables for this engagement.]

- i). Site survey report:
- ii). Requirements draft
- iii). Final requirements document
- iv). Training manual

In addition, Supplier will provide copies of any briefing materials, presentations, or other information developed to support this engagement.

Any inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the execution of this Statement of Work shall be deemed Work Product. Configuration of software shall not be deemed Work Product. All provisions of the Contract regarding Work Product shall apply to this Statement of Work.

If travel expenses are not included in the fixed price of the Services, such expenses shall be reimbursed in accordance with Commonwealth of Virginia travel policies as published by the Virginia Department of Accounts (<http://www.dca.virginia.gov/procedures/adminservices/capp/pdfdocs/20335.pdf>).

## 7. TESTING AND ACCEPTANCE

### A. User Acceptance Test Plan

Acceptance Criteria for Deliverables will be based on the Requirements set forth in Contract Exhibit A and Section 1 of this Statement of Work. Supplier shall design a written User Acceptance Test (UAT) Plan, acceptable to the Authorized User, which will ensure that all of the functionality required for the Deliverables been delivered. Supplier will provide the Authorized User with a detailed Acceptance check-list based on the Requirements. The UAT Plan, including the Acceptance check-list, will be incorporated as Attachment 1 to this Exhibit D-X.

### B. Review / Testing of Deliverables

Following delivery / performance / completion of each Deliverable, on-site review/testing shall be conducted in accordance with the Acceptance test provisions of the Contract and the UAT Plan. The Authorized User shall provide Supplier with reasonable access to its premises, proper environmental and site conditions, any required test data in proper format, and the cooperation of its staff and any other contractors to assist Supplier during testing of the Deliverable.

### C. Deliverable Acceptance Receipt

Each Deliverable provided by Supplier under this Statement of Work will be delivered to the Authorized User with a Deliverable Acceptance Receipt. This document will describe the Deliverable and provide the Authorized User's Project Manager with space to indicate if the Deliverable is accepted, rejected, or partially accepted. For partially accepted Deliverables, the Authorized User's Project Manager shall list on the Deliverable Acceptance Receipt any deficiencies that must be corrected in order for the Deliverable to be accepted by the Project Manager. The Project Manager will have five (5) days, or such longer period as mutually agreed to by the Supplier and the Authorized User in advance, from the completion of review/testing to provide Supplier with the signed Acceptance Receipt. If no material variances from the Requirements are identified within such time period, the Deliverable shall be deemed accepted by the Authorized User.

### D. Correction of Defects

Correction of defects and Cure Period shall be in accordance with the applicable provisions of the Contract. Supplier shall not be required to correct minor imperfections or defects that do not materially impair the operation or quality of the Deliverable.

## 8. ASSUMPTIONS AND PROJECT ROLES AND RESPONSIBILITIES

This section contains assumptions specific to this engagement.

State assumptions here.

The following roles and responsibilities have been defined for this engagement:

### (Sample Responsibility Matrix)

Responsibility Matrix	Supplier	Authorized User
-----------------------	----------	-----------------



Infrastructure – Preparing the system infrastructure that meets the recommended configuration defined in <b>Section 2B herein</b>		√
Server Hardware		√
Server Operating		√
Server Network Connectivity		√
Relational Database Management Software (Installation and Implementation)		√

## 9. SECURITY REQUIREMENTS

Provide (or reference as an Attachment) Authorized User's security requirements. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of the Contract.

At a minimum, Supplier shall adhere to all of VITA's standard security requirements.

## 10. PERSONNEL [THIS SECTION IS OPTIONAL]

### A. Key Personnel

Supplier acknowledges and agrees that Authorized User selected Supplier, and is entering into this Statement of Work, because of the special qualifications of certain of Supplier's personnel ("Key Personnel") identified below.

[Insert names and titles of Key Personnel]

Supplier's Key Personnel shall not delegate performance of their powers and responsibilities with respect to this SOW to another Supplier employee(s) without the prior written consent of the Authorized User. Further, Supplier shall not re-assign or transfer the Key Personnel to other duties or positions such that the Key Personnel are no longer available to provide the Authorized User with their expertise, experience, judgment, and personal attention, without the Authorized User's prior written consent to such re-assignment or transfer, which Authorized User shall not unreasonably withhold. Notwithstanding the foregoing, Supplier may replace Key Personnel without Authorized User's consent in the event any Key Personnel are no longer available due to death, illness or termination of employment with Supplier.

In the event Supplier requests that the Authorized User approve a re-assignment or transfer of the Key Personnel, or if Supplier must replace Key Personnel due to death, illness or termination of employment with the Supplier, the Authorized User shall have the right to review the qualifications of and approve or disapprove the proposed replacement(s) for the Key Personnel. Any such replacement shall have substantially equivalent or better qualifications than the Key Personnel being replaced, and shall perform the Services in accordance with the warranties set forth in the Contract. Any replacement personnel approved by Authorized User shall thereafter be deemed a Key Personnel for purposes of this SOW and this SOW shall be deemed amended to include such Key Personnel.

[Use only for time and materials SOWs] Supplier shall not charge Authorized User and Authorized User shall not pay for any proposed replacement Key Personnel while such replacement acquires the necessary skills and project knowledge to proceed with the Services required hereunder; however, such period of non-charge may not exceed twenty-eight (28) calendar days, but shall last for a minimum of fourteen (14) calendar days, after which time Authorized User shall pay for such Key Personnel if Supplier demonstrates to Authorized User's satisfaction that such replacement has acquired the necessary skills and project knowledge to proceed with the Services required hereunder.



**B. Project Manager**

Supplier shall designate one of the Key Personnel as Project Manager for providing the Services to the Authorized User. The Project Manager shall be familiar with Authorized User's business operations and objectives, and shall perform the Services in accordance with the warranties set forth in the Contract. The Project Manager will participate with Authorized User in periodic review sessions and will provide, at the Authorized User's request, detailed progress reports that identify completed tasks and the status of the remaining Services.

**11. RISK MANAGEMENT**

Risk is a function of the probability of an event occurring and the impact of the negative effects if it does occur. Negative effects include schedule delay, increased costs, and poor quality of deliverables.

Depending on the level of risk of this project, as assessed by the Authorized User, this section may contain any or all of the following components, at a level of detail commensurate with the level of risk:

- i). Identification of risk factors.
- ii). Initial risk assessment.
- iii). Risk management/mitigation plan, including determination of roles and responsibilities of the Authorized User and Supplier.
- iv). Risk monitoring plan, including frequency and form of reviews, project team responsibilities, steering and oversight committee responsibilities, documentation.

**12. REPORTING**

The following are examples of reporting requirements which may be included in the Statement of Work by the Authorized User. [Note: In an effort to help VITA monitor Supplier performance, it is strongly recommended that the Statement of Work include "Supplier Performance Assessments". These assessments may be performed at the discretion of the Authorized User and are not mandated by VITA.]

**Weekly/Bi-weekly Status Update.** The weekly/bi-weekly status report, to be submitted by Supplier to the Authorized User, should include: accomplishments to date as compared to the project plan; any changes in tasks, resources or schedule with new target dates, if necessary; all open issues or questions regarding the project; action plan for addressing open issues or questions and potential impacts on the project; risk management reporting.

**Supplier Performance Self-Assessment.** Within thirty (30) days of execution of the Statement of Work, the Supplier and the Authorized User will agree on Supplier performance self-assessment criteria. Supplier shall prepare a monthly self-assessment to report on such criteria. Supplier shall submit its self-assessment to the Authorized User who will have five (5) days to respond to Supplier with any comments. If the Authorized User agrees with Supplier's self-assessment, such Authorized User will sign the self-assessment and submit a copy to the VITA Supplier Relationship Manager.

**Supplier Performance Assessments.** The Authorized User may develop assessments of the Supplier's performance and disseminate such assessments to other Authorized Users of the Contract. Prior to dissemination of such assessments, Supplier will have an opportunity to respond to the assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**13. POINT OF CONTACT**

For the duration of this project, the following project managers shall serve as the points of contact for day-to-day communication:

Authorized User: [REDACTED]

Supplier: [REDACTED]

This Statement of Work is issued pursuant to and, upon execution, shall become an incorporated exhibit to the Contract. In the event of conflict, the following order of precedence shall apply:

- i). The Contract
- ii). This Exhibit D
- iii). The User Acceptance Test Plan

By signing below, both parties agree to the terms of this Exhibit.

Supplier

Authorized User

By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

(Signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

(Print)

(Print)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_